IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.556 OF 2006

IN

NOTICE OF MOTION NO.42 OF 2006

IN

SUIT NO.4142 OF 2005

WITH

CIVIL APPLICATION NO.719 OF 2006

Ravindra Khelu Yadav ...Appellant

Versus

Shri Verendra Bahadur Singh & Ors. ...Respondents

.....

Mr.M.R.Desai for Appellants.

Mr.R.O.Pathak for Respondent No.4.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 1, 2006.

P.C.

1. Heard Counsel for the parties.

2. I find no infirmity in the view taken by the Court below in refusing to grant interim relief

as prayed in the Notice of Motion. Insofar as prayer clause (a) of the Notice of Motion is concerned, the relief claimed is that the Defendant be restrained from dispossessing the Appellant from temporary alternate accommodation (transit camp), which is occupied by him along with Defendant No.4, who is incidentally his brother, without following due process of law.

3. It is not in dispute that permanent alternative accommodation is already offered in lieu of the original premises which were covered by Redevelopment Scheme. That accommodation has been allotted in the name of Defendant No.4. Besides, the record indicates that the Defendant No.4 has already shifted in the said accommodation. If it is so, there is no question of permitting the Appellant/Plaintiff to retain possession of temporary alternative accommodation (transit camp) which was provided to the occupants of the original tenement covered by the Redevelopment Scheme. In the circumstances, this relief cannot be acceded to.

4. To get over this position, Counsel for the Appellant relies on prayer clause (b) of the Notice of Motion. In terms of prayer clause (b), Appellant claims that the Defendant be restrained from dispossessing the Appellant/Plaintiff from the newly constructed permanent alternative accommodation being Flat No.202 situated in Adarsh Society, Ram Mandir Road, Goregaon (West), Mumbai, which is allotted in the name of Defendant No.4 by the Defendant No.2. Once again, even this relief cannot be granted to the Appellant. This is so, because the Appellant has approached the Court with clear assertion that he is not allowed to enter the newly allotted permanent alternative accommodation in favour of brother Defendant No.4. In the circumstances, the question of granting relief as prayed in terms of prayer clause (b) does not arise.

5. Counsel for the Respondent No.4 has rightly invited my attention to the communication sent by the Appellant/Plaintiff to the Commissioner of Police dated 7th September 2000 at Page 174 wherein, the Appellant has made grievance that he

has been forcibly thrown out of the premises by the Defendant No.4 by adopting deceitful means. Going by the tenore of this letter, it is obvious that the Appellant concedes the position that he was not in possession of the original tenement, in lieu whereof, alternative accommodation is offered in the name of Defendant No.4. The Appellant can succeed only after appropriate declaration is sought by the Appellant against the Defendant No.4. Suffice it to observe that even relief in terms of prayer clause (b) cannot be granted in favour of the Appellant in the fact situation of the present case.

6. Prayer (c) of the Notice of Motion is for appointment of Court Commissioner to visit the suit premises to report who is in actual physical possession and the articles and belongings lying in the suit premises. This relief was not pursued before the lower Court. There is no discussion in the impugned Judgment that this relief was pressed by the Appellant at the hearing.

7. Be that as it may, this Appeal should

fail. The same is dismissed. No order as to costs.

8. Counsel for the Appellant seeks liberty to move the Trial Court to take out appropriate application for amendment of the Plaint. Liberty as prayed is granted.

9. Needless to observe that if such application is taken out, the Trial Court shall decide the same on its own merits in accordance with law.

10. It is further clarified that the Trial Court will decide the pending Suit on its own merits in accordance with law, uninfluenced by the observations made in the impugned order or for that matter, the present order.

11. In view of the above order, acompanying Civil Application also stands dismissed.

A.M.KHANWILKAR, J.